IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11-7-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.Nos.15023 of 2006 (T)
in
OA No.1763/95

Tamil Nadu Leprosy Eradication
Supervisory Officials Association,
rep.by its General Secretary,
Thirukkural 1st Street,
Kamarajapuram, Selaiyur PO,
Madras - 73. ... Petitioner

Vs.

1. The Government of Tamil Nadu,
rep.by the Secretary to Government,
Finance Department,
Fort St. George,
Madras - 9.

2. The Director of Medical and
Rural Health Services,
Madras - 6. ... Respondents

PRAYER: This writ petition came to be numbered by way of transfer of O.A.No.1763 of 1995 from the file of the Tamil Nadu Administrative Tribunal with a prayer to call for records in Government Letter No.109346/PC/94-1, Finance Department, dated 3.1.1995 passed by the first respondent and set aside the same.

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For Petitioner : Mr.S.Mani

For Respondents : Mr.V.Manoharan,
Government Advocate

O R D E R

Prayer in the writ petition is to quash the order of

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recovery dated 3.1.1995 passed against the petitioner herein by the first respondent.

2. The case of the petitioner Association is that 5% personal pay was given to all the categories of staff in the Health Department and the members of the petitioner association were also given 5% basic pay as personal pay when the 5th pay commission was implemented. However, by a subsequent clarification issued on 24.8.1982 only four categories of staff in the pre-revised scale of pay of Rs.475-775, 610-1075, 705-1230, 905-1545 were extended the 5% personal pay and not to the members of the petitioner association, who are all Leprosy Reduction Supervisors.

3. The first respondent filed counter affidavit before the Tribunal on 6.9.1995 wherein it is stated that the member of the petitioner association, who are in the pay scale of Rs.1400-2600, are not coming within the four categories of pay scales as per the Government Orders dated 24.8.1992 and 27.12.1993 and therefore they are not entitled for personal pay and the grant of 5% personal pay to those, who were promoted as non-medical Supervisors during the period 1.6.1988 to 26.6.1989 may be reviewed and the additional amount paid can be recovered.

4. From the counter affidavit it is seen that the respondents themselves by irregular fixation, paid 5% of the salary as personal pay to the members of the petitioner association, for which neither the association nor any of its member is responsible as they have not suppressed any facts and derived any benefits.

5. In such contingency, the Honourable Supreme Court in the decision reported in (1995) 1 SCC (Supp) 18 (Sahib Ram v. State of Haryana), held that the salary already fixed and paid cannot be recovered. A Division Bench of this Court followed the above decision in the judgment reported in 2006 (3) LLN 461 (D.Palavesamuthu v. T.N.Administrative Tribunal & Others). I have also followed the above two decision in the case reported in (2006) 1 MLJ 695 (S.A.Kanthimathi v. Director of School Education, Madras).

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6. Following the above cited decisions to the facts of this case, I set aside the impugned order of recovery dated 3.1.1995 and allow the writ petition. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To

1. The Secretary to Government, Finance Department, Fort St. George, Madras - 9.

2. The Director of Medical and Rural Health Services, Madras - 6.

+1cc to Mr.S.Mani, Advocate Sr 41903
+1cc to Govt. Pleader Sr 42079

RSN (CO)
km/6.8.

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